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APPROPRIATIONS FOR THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

H182 ORIGINAL

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

COMPLETED

ON

H.R. 2153

APPROPRIATIONS FOR THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

MARCH 18, 1986

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APPROPRIATIONS FOR THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

TUESDAY, MARCH 18, 1986

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW
AND GOVERNMENTAL RELATIONS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 2:10 p.m., in room 2237, Rayburn House Office Building, Hon. Dan Glickman (chairman of the subcommittee) presiding.

Present: Representatives Glickman, Frank, and Swindall.

Staff pesent: William P. Shattuck, counsel; Janet Potts, counsel; Kevin C. Richardson, associate counsel; and Florence McGrady, legal assistant.

Mr. GLICKMAN. Why do we not go ahead and begin this morning.

Today we begin our hearing on H.R. 2153, a bill which would authorize appropriations for the Administrative Conference of the United States from 1986 to 1990. This Conference was established in 1964. Its purpose is to serve the public by working to attain fairness and balance in the procedures followed by agencies.

[A copy of H.R. 2153 follows:]

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99TH CONGRESS
1ST SESSION

H. R. 2153

To authorize appropriations for the Administrative Conference of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1985

Mr. SAM B. HALL, JR. introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To authorize appropriations for the Administrative Conference of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Section 573(a) of title 5, United States Code, is amended by deleting "91" and inserting in lieu thereof "101".

(b) Section 573(b)(6) of title 5, United States Code, is amended by deleting "36" and inserting in lieu thereof "40".

SEC. 2. Section 576 of title 5, United States Code, is amended to read as follows:

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"§ 576. **Appropriations**

"There are authorized to be appropriated $2,300,000 for the fiscal year ending September 30, 1986, and such sums as may be necessary to carry out the purposes of this subchapter for each fiscal year thereafter up to and including the fiscal year ending September 30, 1990.".

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It also assists the Congress by analyzing or suggesting legislative changes in order to assist in increasing the efficiency and fairness of agency procedures. The Conference works with agencies on a continuing basis to improve and simplify their regulatory enforcement and adjudicatory functions.

I would ask my entire statement appear in the record.

[The statement of Mr. Glickman follows:]

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OPENING STATEMENT OF THE HONORABLE DAN GLICKMAN
AUTHORIZATION OF APPROPRIATIONS FOR THE ADMINISTRATIVE CONFERENCE

THE SUBCOMMITTEE HEARING TODAY IS ON H.R. 2153, A BILL WHICH WOULD AUTHORIZE APPROPRIATIONS FOR THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES FROM 1986 THROUGH 1990.

THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES WAS ESTABLISHED IN 1964. THE PURPOSE OF THE CONFERENCE IS TO SERVE THE PUBLIC BY WORKING TO ATTAIN FAIRNESS AND BALANCE IN THE PROCEDURES FOLLOWED BY AGENCIES. IT ALSO ASSISTS THE CONGRESS BY ANALYZING OR SUGGESTING LEGISLATIVE CHANGES IN ORDER TO ASSIST IN INCREASING THE EFFICIENCY AND FAIRNESS OF AGENCY PROCEDURES.

THE CONFERENCE WORKS WITH AGENCIES ON A CONTINUING BASIS TO IMPROVE AND SIMPLIFY THEIR REGULATORY, ENFORCEMENT, AND ADJUDICATORY FUNCTIONS. IT ALSO RENDERS TECHNICAL ASSISTANCE AND ADVICE TO OTHER AGENCIES CHARGED WITH THE DIRECT IMPLEMENTATION OF NEW LEGISLATION, SUCH AS THE EQUAL ACCESS TO JUSTICE ACT AND THE REGULATORY FLEXIBILITY ACT. IN ADDITION, THE CONFERENCE HAS STATUTORY MANDATES, SUCH AS THOSE IN THE SUNSHINE ACT AND THE MAGNUSON-MOSS ACT, TO MONITOR AGENCY IMPLEMENTATION OF STATUTORY PROGRAMS.

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In today's hearing, the Subcommittee will focus particularly on the activities of the Conference since its last authorization in 1982. We will also look at its proposed activities for the requested authorization period, which would last until 1990.

I would like to emphasize that this subcommittee intends to take a careful look at the needs and expenditures of the Conference. This government faces a genuine budget crisis, with deficits mounting every day. Therefore, any proposed budgets and expenditures must be carefully examined to be sure they are necessary and will accomplish their intended goal.

With this basic approach in mind, I would like to welcome Marshall Breger, the Chairman of the Administrative Conference of the United States.

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Mr. GLICKMAN. I am most appreciative that Marshall Breger, the Chairman of the Administrative Conference, is here with us. It is a delight to have you.

So why do we not go ahead and begin, Marshall, and you may proceed—I know you have a longer prepared statement, do you not?

Mr. BREGER. We have a prepared statement, Mr. Chairman, and I would ask that that be placed in the record.

Mr. GLICKMAN. The entire statement will appear in the record and so you may summarize as you deem appropriate because, since you are the only witnesses today, this could be one of the faster hearings in the history of the Congress maybe.

TESTIMONY OF MARSHALL J. BREGER, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, ACCOMPANIED BY STEPHEN L. BABCOCK, EXECUTIVE DIRECTOR; RICHARD K. BERG, GENERAL COUNSEL; AND JEFFREY S. LUBBERS, RESEARCH DIRECTOR

Mr. BREGER. I will try to match you in brevity.

Mr. GLICKMAN. OK.

Mr. BREGER. Let me thank you, Mr. Chairman, for the opportunity to testify today in support of this legislation to extend the authorization of the Administrative Conference.

As you know, I became chairman of the Conference on October 28, 1985, succeeding Loren Smith, who is now the distinguished chief judge of the U.S. Claims Court.

Let me introduce the senior staff of the Conference who is here with me, Steve Babcock, our Executive Director; Dick Berg, our General Counsel; and Jeff Lubbers, our Research Director.

This committee has been a strong supporter of the Conference in the past and I look forward to continued close cooperation with the committee and its excellent staff.

The legislation before you is a bill to extend our present authorization for an additional 4 years. Our present authorization extends to the end of the current fiscal year and since I know you are familiar with the general structure of the Administrative Conference, I want to just make a few comments about the kind of work we do and then answer questions.

Our principal work product is the production of recommendations. We have produced 109 recommendations and 11 other formal statements in our 18-year existence.

These range over the entire field of Federal administrative procedure. Some are addressed to problems common to all agencies; others to a single agency or program. I think it is fair to say that we have done some of the seminal work on informal rulemaking on the FOIA—Freedom of Information Act—the Sunshine Act, and in the area of administrative law judges, ALJ's.

Some recommendations call for legislative action; some are directed to the agencies to urge them to change their procedures. A few are addressed expressly to the courts. With each recommendation, we have prepared a detailed research report, usually done by a Conference contractor, a law professor. The report is reviewed by

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one of our standing committees, which also considers the proposed recommendation.

Whether the recommendation is accepted or rejected, the work is thorough.

Let me emphasize that the Conference has no authority to compel compliance. Our implementation tools are persuasion and reminder. We use a carrot, not a stick, and I must say we have had a good deal of success in attaining compliance. Largely by agencies discussing with us the recommendations and, over time, coming to a point of view similar to our own.

We also perform a consultative role. We provide advice and information to congressional and agency staff. We file comments with Congress and with OMB. We recently testified before this committee on the program fraud legislation. We are constantly fielding agency questions on administrative law issues.

On occasion, we are specifically asked by Congress to assist in implementing legislation. When Congress passed the Equal Access to Justice Act, agencies were directed to consult with us before adopting their rules and we were instructed to report to Congress annually on implementation of the EAJA. We continue to do this. Indeed, we promulgated model rules for all agencies when the EAJA was first put forward and we are in the process of doing so to meet the amendment passed last year.

This is the most recent of several statutory assignments we have received from Congress. We were assigned consultative or evaluative responsibilities in the Government in the Sunshine Act, in the "Four R Act," the Railroad Revitalization and Regulatory Reform Act, and in the Magnuson/Moss FTC Improvement Act.

Let me give you an idea of what we plan to do in the future. I intend to commission fewer and larger projects and to cluster them around several common themes. I might add, I say fewer and larger because I believe that much of the easy work in administrative procedure has been accomplished. What remains is the hard work which requires empirical investigation.

We are continuing our traditional themes of studies of informal rulemaking and on the status of administrative law judges, but we are adding new themes. We want to do work on alternate means of dispute resolution. We have been a leader in encouraging agencies to attempt the negotiation of regulations and have provided them guidance on how and when to do this.

We are observing closely agency experience with this device of "reg/neg" and we continue to assist agencies. We have a working group that meets monthly on this problem.

We are also working on improving or encouraging agencies to engage in arbitration, to develop small claims processes and the use, as an example, of minitrials to expedite settlements at NASA.

We have two studies going on in this area, one study looking at the Grant Appeals Board of the Department of Health and Human Services, and another more general study of the entire range of informal devices in use throughout the Government.

We are also studying the use of nonlawyers in administrative proceedings. We are looking as well at the whole area of how the Government deals with injury or damage claims from the public.

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We concluded a major study in 1984 of the administration of the Federal Tort Claims Act and other statutes permitting recovery for meritorious claims against the Government and we are continuing our work in this area. We set up a special committee on governmental tort claims to assist us in this study. We are looking as well at the problems connected with making the Gvernment more cost-efficient. We have a study going on the use of user fees. We are studying the experience under the Federal Debt Collection Act and we have prepared a study of the use of private attorneys by Federal Government agencies, an area that has not hither to been looked at.

In the future, I hope to give more attention to our implementation efforts. Many, as I say, of our recommendations have been fully or substantially implemented. Some have been rendered moot by subsequent events and some represent ideas whose time has come and gone. But there are others that we believe are valid and relevant today and I hope to undertake a selective implementation effort concentrating on those recommendations which offer the most promise of producing visible results.

Let me turn briefly to the particular provisions of the bill before you. We request extension of our authorization for an additional 4 years to fiscal year 1990 and we seek that you should authorize appropriation of "such sums as may be necessary to carry out the purposes of the Administrative Conference Act." I should point out that our authorization for the preceding 4-year period was $2,300,000 a year.

Our bill contains one additional amendment to the act. We are requesting that the maximum number of members of the Administrative Conference be increased from 91 to 101 and that the maximum number of public members appointed be raised from 36 to 40. The reason for this is simple. We have in the past had memberships for all relevant Government agencies, and Government agencies seem to be growing like topsy, so there are more of them now. We have tried to deal with this by giving agencies that were not in the original list liaison status, nonvoting status. Many of those liaison members participate fully. We think it is time that they become full members in order to continue our practice of having the entire range of Government operations as members of the Conference.

If our amendment is enacted, we expect to add approximately six Government members and also four additional public members to preserve the intended ratio under our relevant statutory authority.

I should point out that this proposal will have no perceptible impact on our budget. The Government members are almost always in Washington. In any event, the agencies would pay for them. The only cost might be the transportation costs for the additional four public members.

I should avert to one other item. We have requested authorization to use $1,000 of our budget for entertainment expenses for foreign dignitaries. This request, I am told, results from an oversight in the preparation of our authorization bill. Apparently we had not realized that this would require specific authorization and, therefore, we must come to you now to discuss it.

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I should point out that because of the analog between the Conference and such, foreign organizations as the Council of Tribunals in the United Kingdom and the Commonwealth, we seem to be on the visitors circuit for at least middle-level foreign dignitaries. So we have the kind of problem in a small way that George Shultz faces on a broad scale. Because we represent the U.S. Government it isn't that we give foreign dignitaries some good treatment when they come to visit us.

We had last week 20 Supreme Court Justices and other officials from various African and South American States. Tomorrow, I have the Administrative Director of the Ministry of Justice of the Government of Iraq. We constantly have foreign dignitaries coming to visit, as I say, because of the analog that the Administrative Conference plays to institutions in their own countries.

At present, when we find it necessary to provide them with some modest entertainment, it comes out of the pockets, frankly, of the chairman and the senior staff here, and as much as no one wants to believe it, the pockets are not that deep. So we are requesting authorization to utilize up to $1,000 from our budget. It is not a request for additional funds, but up to $1,000 from our budget for use when necessary when entertaining foreign dignitaries.

I should again underscore, this has nothing to do with the receptions or any entertainment for Conference members. Those come out of private funds. The Conference members themselves put up the money for those receptions.

Thank you very much. I am happy to answer any questions you might have.

[The statement of Mr. Breger follows:]

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Testimony of Marshall J. Breger, Chairman, Administrative Conference of the United States

Summary of Testimony

The Administrative Conference supports enactment of H.R. 2153, a bill to extend the authorization of the Conference for four additional years, fiscal 1987 through fiscal 1990.

Our testimony describes the structure of the Conference and reviews its record and accomplishments in the period 1982 to date. In that period the Conference has held eight plenary sessions at which it adopted 23 recommendations and 5 statements. Among the more significant recommendations and studies issued were those relating to the use of the good cause exemption from notice-and-comment rulemaking (Recommendation 83-2), the use of regulatory analysis in rulemaking (Recommendation 85-2), procedures for negotiating proposed rules (Recommendations 82-4 and 85-5), and administrative processing of tort claims against the Government (Recommendation 14-7). We have also advised Congress and the agencies on procedural problems, and have issued two useful publications, A Guide to Federal Agency Rulemaking and Federal Administrative Procedure Sourcebook. We have also continued to perform our statutory responsibilities under the Equal Access to Justice Act and, most recently, have published draft revised model rules reflecting the changes in the Act made in 1985. We believe the record of the Conference warrants renewal of our authorization.

With respect to the terms of the authorization, we prefer "such sums as may be necessary to carry out the purposes of the Administrative Conference Act," because of the need for flexibility in budget authority in order to meet unanticipated demands, particularly responsibilities imposed by statutes.

Finally, we are requesting amendments to the Administrative Conference Act to increase the number of members. The purpose is to permit voting membership for a number of agencies now participating on a liaison basis. The proposed increase in membership will have no significant budgetary impact.

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Mr. Chairman and Members of the Subcommittee on Administrative Law and Governmental Relations:

Thank you for the opportunity to testify today in support of H.R. 2153, a bill to extend the authorization of the Administrative Conference.

While I am a relative newcomer, I know the Administrative Conference is no stranger to this committee. The Conference and this commitee have long shared a common interest in finding ways to improve the day-to-day operations of the Federal Government. This is an unglamorous but important task, making the procedures of Federal agencies fairer, more efficient, and more responsive to the needs of our citizens. This committee has been a steady source of support to the Conference over the years. Our staff have worked closely with the staff of this committee on such matters as regulatory reform, the race to the courthouse bill, and tort claims legislation. We look forward to similar cooperation in the future.

The legislation before you has been submitted by the Conference to extend our present authorization for an additional four years. The Conference's present authorization, enacted in 1982, extends through the end of the current fiscal year. We have in recent years been on a four-year authorization cycle, and since it has been almost exactly four years since our last oversight hearing before this committee, I shall attempt to review in detail the Conference's activities since mid-1982. I believe it is a record of accomplishment which amply justifies extension of our authorization. But since some of you may not be familiar with the background of the Conference — as, indeed, I was not before I took up my present position — let me describe briefly what the Conference is, why it was established, and what we do.

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Background and Structure of the Conference

The Administrative Conference of the United States is a federal agency whose mission is to perform studies and to recommend improvements in the administrative procedures of Federal departments and agencies. The Conference was established by the Administrative Conference Act of 1964, 5 U.S.C. §§571-576, although it was not activated until January, 1968 with the appointment of its first chairman. The Conference was the successor to two very successful temporary Administrative Conferences, one established by President Eisenhower in 1953, the other by President Kennedy in 1961. Other temporary bodies had been established in earlier years to examine the Federal administrative process, notably the Attorney General's Committee on Administrative Procedure in 1939, and the two Hoover commissions in the 1950's. Though the scope and focus of the work of these earlier bodies varied, they all urged the establishment of a permanent Federal organization to conduct a continuing examination of the administrative procedures of the Federal agencies and to recommend improvements. In response to these recommendations Congress passed the Administrative Conference Act which establishes the Conference and empowers it to "study the efficiency, adequacy and fairness of the administrative procedure used by administrative agencies" and to make recommendations for improvements "to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest," 5 U.S.C. §§571, 574.

The essential features of the Administrative Conference make it a unique governmental institution. First, its mission is, in effect, to monitor all aspects of the administrative process in all of the executive and independent agencies; to identify and analyze the causes of administrative inefficiency, delay and unfairness; and to recommend specific means of improving the quality of administrative justice as it

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affects millions of Americans in their daily lives. Its functions are to study and to recommend. It does not have any operating programs, nor does it have authority to compel compliance with its recommendations.

Second, the Administrative Conference is unique in its composition. Leadership is provided by a full-time Chairman, who is appointed by the President with Senate confirmation for a five-year term, and by a ten-member Council appointed by the President for three-year terms and drawn in part from Federal agencies and in part from private life. Its membership also includes 44 high-level representatives designated by 38 major departments and agencies of the Federal Government, and 36 "public members," distinguished citizens from outside the Federal Government who are specially informed with respect to administrative procedure.[1] While our statute assures that the Government members will compose a majority, it also guarantees a strong input from outside the Federal Government through participation of private practitioners, academics, state officials and others. This breadth of representation gives us the benefit of a range of judgment and experience, and adds credibility to our final product.

Third, the method of operation of the Conference is unique. The ninety members, other than the Chairman, furnish their time and talents without compensation and beyond their regular Government or private endeavors. The membership constitutes the Assembly, which meets in plenary session at least once and usually twice a year. Proposals are referred to the Assembly for action from the Conference's Committees. Each Conference member is assigned to one of the six standing committees. (In addition, special committees are occasionally established to deal with particular problems.)

1/ In addition, we have two categories of non-voting participants in our deliberations — liaison representatives from agencies not entitled to voting membership and from certain professional groups, such as the American Bar Association, and Senior Conference Fellows. Senior Conference Fellows include former chairmen of the Conference and former members who served for at least eight years. This category of membership was created in 1982 to enable us to retain the participation of long time members while providing for reasonable turnover in our public membership.

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Committee activities are supported by a small, highly qualified staff in the Office of the Chairman and by consultants drawn mostly from law school faculties, who perform pursuant to contract most of the research which forms the basis for Conference recommendations.

Fourth, the Conference is authorized to make recommendations directly to the agencies, the President, the Congress and the Judicial Conference of the United States. Thus, it may address itself to all problems of administrative procedure, whether they call for administrative, legislative or judicial solutions, or some combination thereof.

Finally, the Administrative Conference is unusual among advisory bodies in its permanence. Most commissions and advisory groups are established for the sole purpose of studying specific problems and cease to exist after they report their findings and conclusions to the Congress or the President. The Administrative Conference, however, as a permanent agency, has the opportunity to seek implementation of its recommendations and to develop an institutional expertise. A continually growing responsibility of the Chairman's office is to work with the agencies to effect the recommended changes that will strengthen the Federal administrative process or to seek necessary legislation from the Congress.

We thus have a full-time, permanent independent agency whose sole responsibility is to seek to improve the machinery of government. Since its authority is only recommendatory, the Conference draws its strength from the high calibre of its membership, the quality of its research, and the persuasive force of its recommendations.

I am including in the attachments to my testimony an article entitled The Administrative Conference: Guardian and Guide of the Regulatory Process, by Judge Carl McGowan, Senior Judge of the United States Court of Appeals for the District of Columbia Circuit.* Judge McGowan served on the Council of the Second Temporary Administrative Conference in 1961-62 and now serves as a liaison member of the

* Note: Made part of the Committee Files.

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Conference from the Judicial Conference. The article, which is based on the Manuel F. Cohen Memorial Lecture, delivered by Judge McGowan in 1984 at George Washington University, reviews some of the high points of the Conference's history, and I am sure the members of the Committee will find it interesting.

Activities of the Conference

The principal work product of the Conference is, of course, its recommendations and other formal statements. In its eighteen-year existence the Conference has held thirty-one plenary sessions, in which it has adopted 109 recommendations and 11 other formal statements. (A statement differs from a recommendation in that it may not call for specific action, but simply directs attention to a problem or states the position of the Conference with respect to a particular matter.) These recommendations range over the entire field of Federal administrative procedure. Some are addressed to problems common to many agencies, such as Recommendation 71-2, Principles and Guidelines for Implementation of the Freedom of Information Act and Recommendation 73-1, Adverse Agency Publicity. Some are addressed to a single agency or program, such as the series of recommendations directed to the Internal Revenue Service's procedures in dealing with individual taxpayers, Recommendations 75-5 through 75-10 or Recommendation 74-3, Procedures of the Department of the Interior with Respect to Mining Claims on Public Lands. Some recommendations call for legislative action, such as Recommendations 68-7, 69-1, and 70-1, which urged abolition of sovereign immunity and certain other technical defenses to suits for judicial review of agency action. (These recommendations were fully implemented by Public Law No. 94-574, enacted in 1976.) A few recommendations are addressed expressly or impliedly to the courts, such as Recommendation 74-4, Preenforcement Judicial Review of Rules of General Applicability, and Recommendation 77-3, Ex parte Communications in Informal

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Rulemaking Proceedings. Each recommendation is supported by a detailed research report prepared by a Conference contractor or by Conference staff and reviewed by the committee which considers the recommendation. These reports are published in Conference annual volumes and, in most cases, in leading law reviews, so that they receive wide circulation in the administrative law community. They are frequently cited in judicial opinions, and I think it is fair to say that the Conference has sponsored a substantial portion of the significant legal research in administrative law over the past eighteen years.

One of the significant features of the Conference is that its continuing existence enables us to follow up on recommendations by seeking their implementation. The implementation program is primarily a responsibility of the Conference staff. Recommendations, upon adoption, are published in the Federal Register and forwarded to the affected agencies with a request for a report on the extent to which they are being implemented. Recommendations which call for legislation are sent to the appropriate Congressional committees. The texts of recommendations of continuing general interest are published in Title 1 of the Code of Federal Regulations.

Let me emphasize again that the Conference has no authority to compel compliance with our recommendations. Our implementation tools are persuasion and reminder. Overall we have been generally successful in obtaining compliance. However, because of the large number of recommendations and our inability to devote significant staff resources to surveying implementation, we do not have as precise information on implementation as we would like.

Apart from the development and implementation of its recommendations, an important function of the Conference is to collect and publish information on subjects related to Federal administrative law. One of our statutory assignments is to "collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure," 5 U.S.C.

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§574(3). The Conference publishes, and encourages the publication elsewhere, of the research reports of its consultants. We also from time to time prepare and distribute other publications. For example, from 1976 to 1978 we collected caseload statistics from the agencies that conduct formal administrative proceedings. This data included not only numbers of cases, but information as to processing time at each stage of the proceeding, quantity of paperwork, and manner of disposition of the proceeding. The results were published in 1980 and have been used in several Congressional and Conference studies of the administrative process. However, because of the costs involved, we have not continued to collect this data. Another collection of information extremely useful to the agencies has been our Directory of Administrative Hearing Facilities, which lists and describes courtrooms, hearing rooms and other locations across the country which are available, usually without cost, for administrative hearings and conferences in order to assist persons in charge of scheduling hearings and conferences to locate appropriate sites. Prior to our collecting this information, there had been no central source of information in the Federal Government on the availability of these facilities. Our initial edition of the Directory was so well received by the agencies that we issued an updated version in 1982. Other significant publications of the Conference have included the Manual for Administrative Law Judges, which has been widely distributed to federal and state administrative adjudicative officials, and An Interpretive Guide to the Government in the Sunshine Act, which is regarded as the leading authority on the Act and has been relied on in numerous judicial decisions construing the Act.

The Conference also performs an important consultative role. Our staff provides advice and information to Congressional and agency staff on procedural problems in pending legislation. We file comments with Congress and with OMB and sometimes testify on such legislation, as we did recently before this committee on the Program Fraud Civil Penalty legislation. Furthermore, to an increasing extent we have been given special consultative or evaluative assignments in new legislation. Thus, the Government

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in the Sunshine Act directed all affected agencies to consult with the Conference in the course of preparing their initial regulations. The Magnuson-Moss Warranty-Federal Trade Commission Improvement Act directed the Conference to perform a special study of experience with the new rulemaking provisions in the Act. Most recently, the Equal Access to Justice Act has directed that the agencies consult with the Chairman of the Conference in formulating their procedures for administering the Act and has assigned to the Conference the duty of collecting information from the agencies and reporting annually to Congress on the administration of the Act, 5 U.S.C. §504(c), (e). These statutory assignments of responsibility to the Conference demonstrate increasing recognition of the Conference's achievements, and we welcome them. At the same time they can present a problem, for such assignments tend not to be accompanied by additional budgetary support, and consequently compliance may force the Conference to divert resources from its other functions. This is a subject I shall return to later in my testimony.

Highlights of the Period 1982-1985

During the years 1982 through 1985 the Conference held eight plenary sessions, at which it adopted 23 recommendations and 5 formal statements. The full texts of these recommendations and statements are included in the appendix to my testimony. I will not try to summarize them all, but let me describe some of the more significant ones. *

One of the continuing themes of Conference activity, even from the very beginning, has been to improve agency rulemaking procedures. Some of our earlier studies and recommendations regarding rulemaking have been very influential in the evolution of agency practices as well as of Congressional and judicial attitudes toward rulemaking procedures. I am thinking particularly of Recommendation 69-8, 1 C.F.R. §305.69-8, which called for the elimination of the exemption from APA rulemaking

* The recommendations and statements were made part of the Committee Files.

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requirements for rules relating to "public property, loans, grants, benefits, or contracts." Other examples include Recommendation 72-5, 1 C.F.R. §305-72-5, which warned Congress against requiring trial-type procedures for the adoption of rules of general applicability, and Recommendation 76-3, 1 C.F.R. §305.76-3, which counseled agencies respecting the desirability of use of procedures in addition to notice and comment in informal rulemaking. We have continued this work in recent years. Recommendation 83-2 was based on a study of agency use of the "good cause" exemption under section 553 of the Administrative Procedure Act. That exemption permits agencies to omit notice and opportunity for public participation in informal rulemaking where the agency finds that such procedures would be "impracticable, unnecessary, or contrary to the public interest." The study determined that there was a need for the good cause exemption and that experience showed the exemption had not been abused. However, it concluded that even where notice and public participation are properly omitted prior to issuance of the rule, because of the need for immediate action, agencies should generally provide a post-promulgation opportunity for comment in order to give interested persons a chance to expose any errors or oversights in the formulation of the rule and to present policy arguments for changing the rule. Furthermore, the Conference recommended that after considering the comments the agency should publish a statement indicating the agency's adherence to or plans to change the rule, and include in the statement a response to significant and relevant issues raised by the comments. (This would be the equivalent of the statement of basis and purpose required by section 553 as part of the normal rulemaking process.) Last year the Conference adopted Recommendation 85-2, Agency Procedures for Performing Regulatory Analysis of Rules, which points out to agencies ways in which they can more effectively integrate regulatory analysis into their decisionmaking process, and makes additional suggestions regarding procedures for obtaining and using information on regulatory analysis. This

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recommendation was based on a massive study by a Conference research contractor, Professor Thomas McGarity, of the experience with regulatory analysis in four departments and agencies.

Another continuing theme of recent Conference activity has been the search for informal means of dispute resolution. We all know that the courts, federal and state, are groaning under the weight of litigation. Administrative agencies are experiencing similar stresses. It is an interesting phenomenon that at the same time that there has been a formalization or elaboration of proceedings that were previously conducted in an informal manner — the obvious example is the evolution of "hybrid" rulemaking — there has been growing dissatisfaction with the costs imposed. Adversary procedures, in particular, tend to impose high resource costs on both the agencies and the participating public. Other procedural devices may impose other costs. For example, to require agencies to explore alternatives or to perform research and analyses they would not otherwise perform costs both time and money, whether or not there is an offsetting benefit in the form of improved knowledge. Beyond these immediate and measurable costs is the perception that adversary proceedings may create rather than simply reflect adversary relationships, and that they make consensual resolutions more difficult to achieve.

Accordingly, the Administrative Conference has joined in the search for workable alternative mechanisms for dispute resolution. This does not mean, of course, embracing willy-nilly every procedural shortcut or undoing the very real progress that has been made in recent years in securing greater procedural protections for individuals and assuring more informed and rational agency decisions. But we strongly believe that more procedure is not necessarily better procedure, and, in particular, that resolving disputes through consensual devices is frequently superior to adversary procedures.

Several of our recent recommendations reflect this theme. In Recommendation 82-4, Procedures for Negotiating Proposed Regulations, we examined the use of a process

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in which an agency which desires to develop a rule brings together representatives of the principal affected interests and encourages them to achieve a consensus on the terms of a proposed rule through negotiation. While the agency must retain ultimate responsibility for the rule, the theory of "reg neg," as it is sometimes called, is that the provision of opportunities and incentives to resolve rulemaking issues through negotiation would result in a simpler and a better process and would produce rules more acceptable to those who are affected by them. Furthermore, the likelihood of subsequent litigation is reduced because potential litigants have participated in developing the consensus that led to the rule's formulation. Our recommendation, therefore, calls for agencies to experiment with regulatory negotiation and describes in some detail how the process should be conducted. It also emphasizes that "reg neg" is not suitable for every rulemaking situation, and it suggests some of the factors which should influence the decision whether to use it.

The Conference followed up its adoption of Recommendation 82-4 with a vigorous effort to persuade agencies to try the new technique. A subsequent Conference study of the experience with "reg neg" in the three agencies that tried it resulted in Recommendation 85-5, adopted in December, 1985. In this recommendation the Conference reaffirmed its support for the process and offered additional advice to the agencies on how to make it work. I might add that we intend to continue to press the agencies to implement our "reg neg" recommendations, and we have set up a special interagency working group to assist agencies in finding the necessary resources and expertise for conducting the negotiation process.

Our interest in alternative means for dispute resolution has not been limited to rulemaking. In Recommendation 84-4 we urged the Environmental Protection Agency to place greater emphasis on negotiation of voluntary cleanups at hazardous waste dump sites in its administration of the Superfund program. The recommendation also suggested the use of outside convenors and mediators to facilitate such negotiations and described

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additional steps EPA could take to encourage greater reliance on negotiated cleanups. Finally, the recommendation emphasized the importance of local citizens' involvement in those aspects of the negotiations that particularly concern them, such as the adequacy of the remedial efforts. In February, 1985 EPA issued, with a request for public comment, an interim policy statement regarding Superfund cleanups which represented a partial implementation of the Conference's recommendation.

Our work in the area of alternative dispute resolution has not been limited to studies and recommendations. In 1982, the Office of the Chairman agreed to provide outreach, training and evaluation assistance to the Merit Systems Protection Board in implementing an experimental system for expedited processing of simple, non-precedential cases. The alternative dispute resolution system, mandated by the Civil Service Reform Act of 1978, was instituted on an 18-month trial basis in five of the MSPB's eleven regional offices during 1983. The Conference first reviewed and made suggestions regarding the MSPB's proposed procedures. It then worked with MSPB representatives and contractors to prepare a two-day course in March 1983 for over 30 participating MSPB employees, with sessions covering the presiding official's role, decision writing, effective mediation techniques, and detailed study of the new expedited procedures. Conference staff worked closely with public policy experts from George Washington University, whom the Conference hired to evaluate the impact of the pilot project, to familiarize them with the experiment and develop a workable evaluation plan. The final evaluation was submitted in early 1985 to the MSPB, which has decided to expand the system to all of its regions.

I intend to give high priority to the search for alternative means of resolving disputes. We are aware of experiments in other agencies, such as a small claims process at HHS and the use of mini-trials to expedite settlements at NASA. We already have two studies under way in this area, one directed at the techniques employed at the Grant Appeals Board of the Department of Health and Human Services, the other a more

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general canvas of the range of informal devices in use throughout the Government. We intend to broaden these studies of agency experience, and where we find techniques which seem to be working successfully, we will urge other agencies to adopt them.

Still another theme of Conference activity in recent years has been improving the procedures by which the Government deals with claims for injury from the public. In Recommendation 82-6, Federal Officials' Liability for Constitutional Violations, the Conference recommended that Congress do away with the threat to Federal officials of personal liability for so-called constitutional torts by enacting legislation to provide that the United States shall be substituted as the exclusive defendant in actions for damages against Federal officers and employees for asserted violations of constitutional rights committed within the scope of their office or employment. More recently, in Recommendation 84-7, we addressed the process by which agencies receive, investigate and evaluate monetary claims from the public under the Federal Tort Claims Act and other statutes permitting recovery for meritorious claims against the Government. We did not recommend any basic changes in the system, but we did urge that agency claims officers adopt a more objective and less adversarial posture in handling such claims, as, for example, by taking reasonable steps to help claimants to avoid technical errors in filing claims and by promoting free and open exchange of information with claimants. The recommendation also calls for amendments to the Tort Claims Act to prevent claims from becoming time-barred because they were filed with the wrong agency or because the Government was substituted for the original defendant.

Our work with the Tort Claims Act has suggested to us a need for rethinking the entire governmental liability system, particularly in the light of the tremendous changes which are occurring elsewhere in the law of torts. To that end, the Conference in 1985 established a special Committee on Governmental Tort Claims. The Committee, chaired by General Counsel Ronald E. Robertson of the Department of Health and Human Services, is charged with examining the present governmental liability system and

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recommending changes in the Federal Tort Claims Act (and perhaps other government liability laws) and improvements in related agency procedures. The Committee sponsored an initial discussion of these issues by several experts at our June 1985 plenary session, and is now proceeding with a staged research plan focusing initially on collecting empirical information on just how the doctrines now in place work, their costs, their impact on agencies, and other problems they cause. In addition to developing proposals for statutory change, we hope to examine innovations by insurers, corporations, state agencies, and risk assessment specialists in an effort to encourage federal agencies to develop managerial responses that will reduce the likelihood of claims arising. Our approach is deliberate; we do not expect to come up with any "quick fixes." Our goal is to develop a solid intellectual foundation for improvements in this complex and controversial area.

We have, of course, continued our consultative and informational activities during the past four years. Two Conference publications are particularly worth noting. In 1983 we published A Guide to Federal Agency Rulemaking. This is a 300-page volume, prepared by the staff of the Chairman's Office, which discusses, step-by-step, the agency rulemaking process, integrating the various statutory and other legal requirements and judicial decisions with practical advice on good rulemaking practices. The book is intended to assist agency rulemaking staffs to keep up with developments in this complicated area, and, incidentally, to bring to their attention the Conference's recommendations respecting rulemaking.

In 1985 the Chairman's Office published the Federal Administrative Procedure Sourcebook. The Sourcebook collects in a single volume the principal Federal statutes, Executive Orders, and regulations that govern administrative procedure. It also includes overviews of the principal statutes, as well as summaries of legislative history, texts of relevant Conference recommendations, bibliographic materials and other research aids. Both the Guide and the Sourcebook have received wide praise.

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The Chairman of the Administrative Conference has had important responsibilities under the Equal Access to Justice Act, which provides for the award of attorneys' fees and expenses to certain parties who prevail over the Federal Government in administrative and court litigation, since its enactment in 1981. The Act directed the Chairman to consult with agencies in the development of procedures for handling applications for fee awards in their administrative proceedings, and to report annually to Congress on the awards made in administrative proceedings. As you know, the Act expired in September, 1984, but was reauthorized and amended last summer (Pub. L. 99-80) following Presidential veto of earlier reauthorization legislation.

To carry out our statutory responsibilities, we developed model procedural rules to implement the Act and established a periodic reporting system to collect data from agencies on their processing and disposition of applications for attorneys' fees. Most recently, we have published draft revised model rules reflecting changes in the Act made by the 1985 legislation; we have received comments on the draft and are now completing work on final model rules. The Chairman's annual report for fiscal 1985 is also nearing completion, and we are in the process of incorporating agency contract appeals boards, newly covered by the Act, into our reporting system.

In addition, the information and expertise developed in the exercise of our statutory responsibilities has enabled the Office of the Chairman to serve as a general resource for Congressional and agency personnel and members of the public seeking advice or information about the Equal Access to Justice Act. We were pleased to be able to assist Congressional committee staff members working on legislation to reauthorize the Act, and we frequently handle informal inquiries from people inside and outside government about the applicability of the Act, its procedural requirements, or the meaning of its substantive provisions as well as about agency implementation of the Act.

We expect this role to continue, as the amended Act presents some new issues and problems. For example, many questions are being raised about implementation of the

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Act by agency boards of contract appeals, whose structure and procedures differ in some important respects from those of other agencies covered by the Act. Determining the net worth of units of local government is another issue we expect to help agencies with in the coming months. Of course, our annual reporting function will continue to be important as well; it will shed light on the impact of recent amendments to the Act as well as help to identify problems in administration of the Act or the possible need for Congressional oversight of agencies paying a disproportionate share of fee awards.

I believe what I have described is a record of significant achievement over the past four years and reflects credit on my predecessor, Judge Loren Smith, as well as the members and staff of the Conference. Furthermore, it was accomplished with substantially the same level of budgetary and staff resources as in previous years. I think the Committee will agree that it is a record which justifies renewal of the Conference's authorization.

Budget and Staff Resources

The Conference's authorization for the period fiscal 1983 through 1986 has been $2,300,000 a year. However, the actual sums appropriated have been well below this figure, ranging from a low of $1.123 million in fiscal '84 to a high of $1.48 million in fiscal '85. The sum requested for the Conference in the President's budget for fiscal '87 is $1.59 million. The staff of the Chairman's Office consists of the Chairman, and ten other professionals (two of whom work part-time) and 9 clericals, and there has been no significant change in these figures over the four-year period. Because expenses of the Office of the Chairman, largely personnel costs and rent, are relatively fixed (at least in the short run), fluctuations in our annual budget have their principal impact on our research budget. Thus, from our appropriations in fiscal '83 and '84 we were able to devote only $66,000 and $16,000 respectively to research contracts, while in fiscal '85

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the figure was $201,000. (These figures do not include research financed through interagency contracts.) The increase requested for fiscal '87 will likewise be channeled into research.

Because our discretionary budget, so to speak, is very small, we are not well positioned to divert resources on short notice to take on unanticipated assignments. This has, on occasion, presented a problem, as in the case of our responsibilities under the Equal Access to Justice Act. This was a statutory assignment which did not carry with it any additional funding, and, although we were glad to undertake it, and I believe it is the kind of thing that the Conference ought to be doing, the fact that we were directed to assume these responsibilities on short notice and without additional budget forced us to divert personnel and resources from other activities.

Plans for the Future

Let me, at this point, describe in general terms our plans for the future. Much will depend, of course, on the level of budgetary support available to us, and we are all well aware of the need for economy at every level of government and in every agency.

With respect to our contract research program I am looking to commission fewer and larger projects organized around a few common themes, including those I have previously described. The Conference has traditionally obtained contract research at fairly low prices, because scholars are attracted by the opportunity to work with the Conference and to develop their work into a published article. This enables us to get excellent "bang for the buck," but it does have some disadvantages. At present the academics who perform most Conference research attempt to work it into the demands of their teaching schedules. Conference projects are commissioned with a view to having most of the basic research performed in the summer months by individual researchers,

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sometimes with modest help from student assistants. This requires long lead times on most projects, and there is often slippage in schedules when Conference needs are subordinated to higher priority demands on our researchers' time. We would like to be able to offer higher contract prices both to increase incentives for prompt completion of our projects and to fund larger scale, more empirical projects. Whether we will be able to do this depends, of course, on our research budgets in the next four years. If the Conference's budget is not increased, another possible approach would be to fund research projects jointly with other interested agencies. We have done this on occasion in the past. While the need for joint funding tends to diminish our control over our research agenda, we may be able to interest other agencies in financing some of the studies we have in mind. At least I intend to explore this possibility.

Still another way to beef up our research effort would be through voluntary private efforts. The Conference is specifically authorized to accept voluntary services, and we have recently accepted a proposal from a prominent Philadelphia law firm to perform for us on a pro bono basis a study of Government employment of private attorneys. This study will examine current agency practices in hiring private attorneys to represent them and evaluate proposals to regulate and to centralize control over this practice. Of course, any recommendations that come out of this study will go through the ordinary Conference process, including consideration in a standing committee, opportunity for public and agency comment, and eventually, consideration by the Assembly.

In short I think we have all come to realize that stringent budgets will be the rule for the foreseeable future, and each agency must learn to get along on less. In terms of our research program, I do not think this should mean doing less, because, quite frankly, I believe it is false economy when you have in being an institution like the Conference, to fail to give it the workload in the form of research and proposed recommendations, fully to engage its capacities. But I do believe this means we must find other ways to do our

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research and to generate proposals for Conference consideration. Joint funding and voluntary efforts are two possibilities. I intend to look for others.

I know the committee is interested in what themes we plan to pursue in our research. I have already described two which I consider of high priority -- alternative dispute resolution and tort and similar claims against the Government. Another project which we are just getting under way is a study of user fees. At a time when budgetary considerations seem to dominate almost all discussion of public business, when Gramm-Rudman has, so to speak, become a household word, I think it is important for the Conference to pay special attention to projects which have a potential for making government more cost-efficient. One way to do so is to see that government programs do not inadvertently subsidize persons or industries that are well able to pay their own way. This is a subject in which OMB and a number of agencies have expressed a keen interest, and we are negotiating with several agencies for joint funding of a research project to examine the feasibility of user fees and how they might be calculated and assessed.

I intend to devote more attention to our implementation efforts. We have, as I have told you, 109 recommendations outstanding. Many have been fully or substantially implemented. Some have been rendered moot by subsequent events. Some, perhaps, represent ideas whose time has come -- and gone. But there are others which are valid and relevant today and, if adopted, would improve the operation of the Government. The Conference should undertake a selective implementation effort, concentrating on those recommendations which seem to offer the most promise for producing visible results.

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Provisions of the Bill

Let me turn now to the particular provisions of the bill before you. The bill would extend the authorization for the Conference for an additional four years, through fiscal 1990. For the additional four-year period it would authorize appropriation of "such sums as may be necessary to carry out the purposes of" the Administrative Conference Act.

The reason for the "such sums as may be necessary" language is to permit flexibility in the event we are assigned additional responsibilities. It has been our experience that when Congress assigns new functions or projects to the Conference, these assignments have not been accompanied by funds to carry them out. This happened in 1980, as I have stated, in the case of the Equal Access to Justice Act which, quite unexpectedly, assigned substantial consultative responsibilities to the staff of the Conference. It is true that our authorization figure has not in fact presented an obstacle to our seeking a supplemental appropriation, but this is only because our appropriations have consistently been well below our authorization.

If the committee concludes that a specific authorization level should be set in the bill, I urge that it be set at the current level of $2.3 million. Let me explain why. Our proposed budget for fiscal 1987 is, $1.59 million, and given our present functions and responsibilities and the overall budget situation in the Government, I do not foresee any dramatic increases in the coming years. But if additional responsibilities are assigned, either by statute or by Executive action, the $2.3 million figure will leave us room to seek additional funding for those responsibilities.

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Membership of the Conference

Our bill contains one additional amendment to the Administrative Conference Act. We are requesting that the maximum number of members of the Conference be increased from 91 to 101 and that the maximum number of public members appointed under section 573(b)(6) be raised from 36 to 40. The reason for requesting an increase in membership is that since the enactment of the Administrative Conference Act in 1964 there has been a significant increase in the number of agencies whose exposure to and interest in problems of administrative procedure warrant membership in the Conference. Conference membership in recent years has been at the statutory maximum, and we have accorded non-voting liaison status to a number of significant agencies and subagencies, including the Merit Systems Protection Board, the U.S. International Trade Commission, the Patent Office, the Federal Mine Safety and Health Review Commission, the Immigration and Naturalization Service, and the Postal Rate Commission. If our amendment is enacted, we expect to add approximately six Government members, through Presidential designation of additional member agencies under section 573(b)(3) and/or through allocation of additional seats to member agencies pursuant to section 573(b)(4). In addition, to preserve the present ratio between Government and public members we contemplate appointing four additional public members under section 573(b)(6).

It is important to emphasize that this proposal will have no perceptible impact on our budget. There is no direct correlation between the size of the Conference's membership and the cost of its program because, with the exception of the Chairman, all Conference members serve part time and without pay. Government members serve as part of their general agency duties. (Where agencies now participating on a liaison basis are granted full membership, the effect will simply be to change the status of their

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Conference representation.) Public members receive no compensation for their service other than their travel expenses, including per diem (5 U.S.C. §573(c)). Furthermore, most public members are from the Washington area and do not incur such travel expenses in connection with Conference business. Accordingly, the only budgetary impact of the proposed increase in membership would be a modest increase in our travel expenses, perhaps $1500-$2500 a year.

Mr. Chairman, there is one final point I would like to raise. We are requesting specific authority in this bill to spend up to $1,000 a year for official reception and entertainment expenses.

In recent years, the scholarly work of the Conference has become increasingly known to academics in other countries and to foreign government officials from organizations with responsibilities similar to those of the Conference. We have received visitors from several different countries in the past year, and we hosted a group of eight distinguished English jurists in September of 1984. The Chairman should, we submit, be in a position to offer modest entertainment to these official visitors. The Chairman of the Conference is probably virtually the only official in the government at Executive Level II who does not have access to entertainment funds.

We requested, therefore, and the President approved provision in our budget for fiscal 1987 for "not to exceed $1,000 for official reception and entertainment expenses." Last week at our Senate appropriations hearing it was pointed out to us that such an item would be subject to a point of order on the House side if not supported by specific legislative authority. Consequently, we are seeking this last minute amendment to our bill.

It is unfortunately true that the Conference, until recently, has done virtually nothing to inform itself about current developments in administrative law in other countries. A small entertainment expense fund would materially assist us in this endeavor. If this modest request is granted, such funds will be expended only on the Chairman's signature, and will be disbursed only in accordance with the principles established in Comptroller General decisions on this subject.

This concludes my testimony. I and my staff would be delighted to answer any of your questions.

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Mr. GLICKMAN. I clearly have no problem with this aspect of your request. I think it is ridiculous you have to take money out of your own pockets to buy coffee when foreign dignitaries come, and so I do not have any problem. I am not sure $1,000 is adequate—that is not very much money to entertain——

Mr. BREGER. We are talking about small items, but they add up over the years. The main point I went on to underscore is that we are not engaged in a slush fund effort here.

Mr. GLICKMAN. You should probably modify the language. The language that I have seen to date does not mention anything about foreign dignitaries. It just talks about $1,000 for official reception entertainment expenses.

Do you think that ought to be limited for entertainment of dignitaries from overseas?

Mr. BREGER. Yes.

Mr. GLICKMAN. OK.

You have mentioned that we have been at a $2.3 million level, the authorizing side, for the last 4 years.

Mr. BREGER. Correct.

Mr. GLICKMAN. What have we appropriated for the last 4 years?

Mr. BREGER. Let me ask Mr. Babcock.

Mr. BABCOCK. For the current fiscal year, we have $1,430,000 before Gramm-Rudman and then $1,369,000 after Gramm-Rudman.

For the fiscal year which ended last September 30, the figure was $1,480,000 and for fiscal years 1983 and 1984, it was around $1,200,000 for both years.

Mr. GLICKMAN. Why do we have an authorization so much greater than what you have been appropriating at? I mean, I agree to give you a little bit of flexibility, but—I am just thinking about taking something to the floor when everything else is going to be cut back and I have to explain that your authorization is $800,000 more or about 40 percent more than your appropriation.

What do you realistically think that you need and let's authorize you what you realistically need and would probably get?

Mr. BREGER. I believe, Mr. Chairman, that our request was for such sums as may be necessary, but if you wish to give a dollar figure, our present budget mark is $1.59 million for the present level of activity that we are engaged in.

Presumably that would increase, or possibly that might increase over the next 4 years by some percentage or another.

Mr. GLICKMAN. $1.59 million is your budget mark for fiscal 1987?

Mr. BREGER. Yes.

Mr. GLICKMAN. What would be wrong with authorizing you at—that may even be too high. What would be wrong with authorizing you at a figure, let's say instead of $2.3 million, at $2 million or $1.8 million so that it gives you enough flexibility but it does not overauthorize you? I think the authorization ought to reflect a reasonably accurate anticipation——

Mr. BREGER. The only comment I would make in that regard, Mr. Chairman, is that—and I am not saying this will necessarily be the case, but in the past, we have been given specific responsibilities by Congress and on some of those occasions, we have not been given specific appropriations to meet those responsibilities.

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Now, if we were to be given over the next 4 years, any of a number of variety of responsibilities which we are not asking for, but which often Congressmen come to us like they did with the Equal Access to Justice Act, and say we want you to have every agency speak to you before each agency implements regulations. We want you to prepare model regs on this subject.

When we did the Magnuson-Moss Warrant Federal Trade Commission Act—if they come to us and direct us to do a study and outside of our present range of activities and if they appropriate money for that study, we would have a second-order problem if we would then bump against our authorization level.

Mr. GLICKMAN. I agree with you. I think the $2.3 million needs to come down some. Still I want to give you enough flexibility because I know that people make demands of you. I kind of perceive that the Administrative Conference is kind of like a think tank that has a slightly different relationship with Congress than an executive branch agency or an independent agency. You are kind of betwixt and between in terms of where you are, but you do have, I think, a great deal of independence which we have appreciated and I think other agencies have appreciated it as well.

I just wanted to mention to you that when we mark this up, we may reduce your numbers some.

I have no real specific questions for you except to tell you that I think you do an outstanding job with the Conference and I think you have been fair and impartial and I was pleased when you were appointed to fill the job as Chairman, Mr. Breger, because I think you are a person of great academic credentials and so we will look forward to working with you in the time to come.

Mr. BREGER. Thank you very much, Mr. Chairman.

Mr. GLICKMAN. Mr. Swindall.

Mr. SWINDALL. I have no questions.

Mr. GLICKMAN. Thank you.

Mr. Frank.

Mr. FRANK. No questions.

Mr. GLICKMAN. OK, that is it.

Mr. BREGER. Thank you.

Mr. GLICKMAN. I would just say for the record that the American Bar Association has a letter supporting the reauthorization and I would ask that it be included in the record.

[The statement of the American Bar Association follows:]

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American Bar Association

March 17, 1986

Honorable Dan Glickman
Chairman
Subcommittee on Administrative Law
and Governmental Relations
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Glickman:

I understand that your committee is considering legislation to extend the authorization of the Administrative Conference of the United States.

The American Bar Association supported the legislation establishing the Administrative Conference, and we have worked closely with the Conference over the years and are familiar with its excellent work.

The Administrative Conference has been an effective instrument for the improvement of administrative procedure. It provides a forum where knowledgable experts from within and outside the Government can in a dispassionate and cooperative way explore and seek solutions to problems of agency procedure. The Conference's studies and recommendations are a source of guidance to the agencies, to Congress, and to the entire administrative legal community.

While we recognize that today there is a need for the utmost economy in Government, we believe the Conference's program performs a valuable service at a very modest cost. Therefore, the American Bar Association urges that Congress approve legislation extending the life of the Administrative Conference and providing budget authority for its program at least at the current level.

Sincerely yours,

William E. Murane

William E. Murane
Chairman

SECTION OF ADMINISTRATIVE LAW

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[Whereupon, at 2:30 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

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